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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-197118

DATE: January 14, 1980

MATTER OF: Permanent Appropriation of Proceeds of
National Defense Stockpile (Rotation) Sales

addressed

DIGEST: Subsection 9(c) of Strategic and Critical
Materials Stockpiling Revision Act of 1979
constitutes permanent indefinite appropriation
of moneys received from sale of stockpile items
being rotated or being disposed of by special
authority of President. Such funds are available
only for purchase of replacement materials for
stockpile. B-114808, August 7, 1979, distinguished.

AGC 00596

The Assistant Director, Accounting Operations, Bureau of
Government Financial Operations, Department of Treasury has
requested our opinion on whether subsection 9(c) of the
Strategic and Critical Materials Stockpiling Revision Act of
1979, Pub. L. No. 96-41, 93 Stat. 319, 323, can be interpreted
as a [permanent indefinite appropriation of moneys] received from
the sale of certain items from the National Defense Stockpile.
This subsection directs that receipts from these sales be
covered into a special fund in the Treasury, to "be available
only for the acquisition of replacement materials." Treasury
asks whether this language constitutes a permanent indefinite
appropriation, in light of our recent decision, B-114808,
August 7, 1979, in which we indicated that a statute cannot be
interpreted to be a permanent appropriation unless the intent
of the Congress to make an appropriation is clear from the
language of the legislation.

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For the reasons indicated below, we find that subsection
9(c) does constitute a permanent indefinite appropriation of
the receipts from the described sales, and that these moneys are
available to acquire replacement materials for the stockpile
without further action of the Congress.

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This Office has consistently viewed statutes which authorize the collection of fees and their deposit into a particular fund, and which make the fund available for expenditure for a specified purpose, as constituting continuing or permanent appropriations without further action by the Congress. See, e.g., 57 Comp. Gen. 311, 313 (1978); 50 Comp. Gen. 323, 324 (1970); 35 Comp. Gen. 615, 618 (1956).

Public Law 96-41 restructures the nation's strategic stockpile system by creating a single National Defense Stockpile. Section 6 of the act sets out the President's responsibilities in managing the stockpile. As relevant to this decision, subsection 6(a) provides:

"The President shall--

* * * * *

"(4) provide for the rotation of any material in the stockpile when necessary to prevent deterioration of such material by replacement of such material with an equivalent quantity of substantially the same material;

"(5) subject to the notification required by subsection (d)(2), provide for the timely disposal of material in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and

"(6) dispose of materials in the stockpile the disposal of which is specifically authorized by law.* * *"

Section 7 of the act defines the special authority of the President to dispose of materials from the stockpile for the purposes of national defense or during a war or national emergency.

Section 9 of the act creates a special fund account for stockpile transactions. This section reads:

"There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the 'fund').

"(b)(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (6) of section 6(a) shall be covered into the fund. Such moneys shall remain in the fund until appropriated or until the end of the third fiscal year following the fiscal year in which they are received. Any such moneys remaining in the fund after the end of such third fiscal year that have not been appropriated shall be transferred

to miscellaneous receipts of the Treasury. Any of such moneys that are appropriated shall be disbursed from the fund in the order in which they were covered into the fund.

"(2) Moneys covered into the fund under paragraph (1) shall be available, when appropriated therefor, only for the acquisition of strategic and critical materials under section 6(a)(1) of this Act (and for transportation related to such acquisition).

"(3) If so provided in appropriation Acts, moneys in the fund, when appropriated, shall remain available for a period of five fiscal years.

"(c) All moneys received from the sale of materials being rotated under the provisions of section 6(a)(4) or disposed of under section 7(a) shall be covered into that fund and shall be available only for the acquisition of replacement materials."

Section 9 treats differently the proceeds of various disposals of stockpile materials. Subsection 9(b) provides that moneys received from stockpile sales made under the authority of paragraphs (5) and (6) of subsection 6(a), quoted above, are to be deposited in the fund. These moneys are to remain in the fund until appropriated or, if not appropriated by the end of the third fiscal year after the year of deposit, transferred to miscellaneous receipts of the Treasury. These moneys, when appropriated, are to be available only for the acquisition of additional materials for the stockpile.

It is clear that moneys deposited into the fund under subsection 9(b) may not be obligated or disbursed unless they are appropriated by the Congress.

Subsection 9(c), with which the Treasury inquiry is concerned, directs that moneys received from rotating materials under paragraph (4) of subsection 6(a) and from special disposals under subsection 7(a) are to be deposited in the fund. These moneys "shall be available only for the acquisition of replacement materials."

This quoted phrase is subject to at least two interpretations. First, because of the presence of the word "only," the phrase may be interpreted simply as a limitation on the expenditure of these funds. Under this interpretation, these moneys would be available solely for the acquisition of replacement materials, but only if the Congress appropriated them. Second, the phrase can be interpreted as actually making the funds available for the acquisition of replacement materials without further action of the Congress. Under this interpretation, subsection 9(c) would satisfy the standards set out above and would constitute a permanent appropriation of these moneys.

In determining which of these meanings the Congress intended in enacting this legislation, we again note that the statute deals with the moneys under subsection 9(c) differently from those under subsection 9(b). In subsection 9(b) the Congress specifically stated that the moneys deposited in the fund would not be available unless appropriated by the Congress. If it were the intent of the Congress that subsection 9(c) moneys would also need an appropriation to be available, there would have been no need for a separate subsection for these moneys; they could have been lumped together with the moneys deposited under subsection 9(b). Therefore, it is likely that the Congress intended subsection 9(c) moneys to be available without further appropriation by the Congress.

This view is confirmed by the legislative history of Section 9. In reporting this legislation, the Committee on Armed Services of the House of Representatives stated:

"The fund will include receipts from the sale of excess materials, the sale of materials being rotated, and the disposition of materials under Section 7 of this bill. Receipts from the sale of excess materials remain in the account until appropriated and shall be available only for acquisition of strategic and critical materials and for transportation related to such acquisition. Once appropriated, they remain available for a period of five fiscal years. Receipts from the sale of rotated materials and from the disposition of materials under Section 7 shall be available only for acquisition of replacement materials without further appropriation. Since the materials are being rotated or disposed of pursuant to Section 7 and are required to be replaced in the stockpile, the committee does not consider it necessary to appropriate the receipts received from such dispositions." (H.R. Rept. No. 96-46, 96th Cong., 1st Sess. 8 (1978). (Emphasis added.)

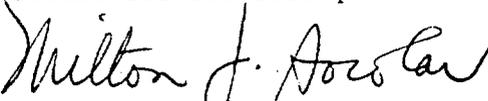
It is clear from this language that the Congress intended that the moneys received from rotation transactions and from special disposals were to be available from the fund for the acquisition of replacement materials without any further action by the Congress.

We conclude that the statute, which authorizes the rotation or disposal of stockpile materials, the deposit of the proceeds of these transactions in a special fund, and the availability of these moneys for a special purpose, constitutes a permanent indefinite appropriation of these moneys.

Our decision in B-114808, August 7, 1979, referred to in the Treasury letter, is distinguishable from the current case. In that decision, we were interpreting a statute which directed the Secretary of the Treasury, at the beginning of a fiscal year, to remit to the Government of Guam an amount equal to the duties, taxes, and fees estimated to be collected in Guam during the coming year. The statute did not specify the source of the funds for these prepayments, but it was clear that at least the payment for the first year would have to come from the general fund of the United States Treasury. Under these circumstances, we looked at Article I, section 9, clause 7 of the United States Constitution, which requires "appropriations made by law" before money can be drawn from the Treasury, and 31 U.S.C. § 627, which states that an act of Congress shall not be interpreted as making an appropriation out of the United States Treasury "unless such Act shall in specific terms declare an appropriation to be made." Applying these standards to the statutory language in question, we determined that although the statute constituted a permanent authorization, it did not establish a permanent indefinite appropriation.

In the present case, we are not concerned with the payment of moneys out of the Treasury. Rather the statute authorizes the retention of the proceeds of certain stockpile transactions in a special deposit fund, and the availability of these funds to purchase replacements for the stockpile. In this instance, where it is clear from the legislative history that the Congress intended that these moneys be available without the need for further appropriation, our rationale in B-114808 does not apply.

Therefore, we conclude that subsection 9(c) of the Strategic and Critical Materials Stockpiling Revision Act of 1979, Pub. L. No. 96-41, constitutes a permanent indefinite appropriation of moneys received from rotation transactions or special disposals, to be used for acquiring replacement materials for the stockpile.


For the Comptroller General
of the United States